Moneylenders Ordinance and in support cited three English cases namely: *Vorst* v. *Goldstein,*[1] *Whiteman* v.*Sadler*[2] *and Mertz* v. *South Wales Equitable Money Society Ltd.*[3]

Section 8(b) of the Moneylenders Ordinance provides that if any person carries on business as a moneylender in any name other than his authorised name, he commits an offence. On the face of these documents, it would appear that by the use of the different names the provisions of this section have been violated. Unfortunately, however, for the appellant these objections were not taken on the pleadings. The defendant himself in his statement of defence merely said this:—

"As to paragraph (1) the defendant admits that the plaintiff's firm is a licensed moneylender",

and plaintiff's paragraph (1) says this:—

"The plaintiff is a licensed moneylender carrying on business at No. 357 Jalan Pudu, Kuala Lumpur".

For the plaintiff section 5(3) was read to us and it reads as follows:—

"(3) A licence taken by a person as a partner in a firm shall be deemed to be a licence to the firm, and every other partner actively conducting in the State the moneylending business of such firm shall be subject to the provisions of this Ordinance in like manner as if he had himself taken out the licence and shall be deemed to hold the licence."

It is obvious that in this case Yoong Shing Finance Co. is a firm and if that firm had been registered as a moneylender then the plaintiff Kok Sen Fatt and any of the other partners are deemed also to hold a licence. Apparently this question was raised in a previous case in which from its description the same firm was concerned, namely *Chan Sau Yin* v. *Kok Sen Fatt,*[4] and briefly stated Thomson L.P. in that case pointed out that there was nothing wrong in Kok Sen Fatt suing on behalf of the firm of Yoong Shing Finance Co. In that case, however, the licence and the entries in the Register of Businesses were before the court and the court had the means of studying them. We have not had the same opportunity in this court for the simple reason that this matter was not argued in the court below. In my view this is an example of a case where this court should not hear argument on a point not raised below because it is actually a question of mixed law and fact. For this reason, in my view this ground of appeal should be dismissed.

The next ground reads as follows:

"The learned trial judge erred in law and in fact in holding that the said memorandum dated 31st October 1968 Exh. P.1 has complied with the provisions of section 16 of the Moneylenders Ordinance 1951 and in giving judgment for the plaintiff."

Section 16 among other things requires that "the parties to the contract or their respective agents" sign the memorandum and the failure to do so would make the contract or security unenforceable. It also requires that the note or memorandum shall contain all the terms of the contract and in particular show separately and distinctly the principal and the rate of interest. The rate of interest in Exh. D. 5B is shown as 12% per annum but as the plaintiff himself admitted he subsequently charged 18%. His explanation was that subsequent to the execution of the document the defendant withdrew certain security namely the registration card of his two bull dozers. It was therefore said that having wrongly overcharged the interest on this loan all subsequent loans which were renewals of the first loan were therefore tainted with illegality. In my own view the failure of the plaintiff to sign as a lender on the first loan has merely rendered that memorandum unenforceable, which merely means that if the plaintiff had sued on that document his suit would be dismissed but the contract itself was not illegal. The difference between an illegal contract and an unenforceable contract is a difference of substance and procedure. It would therefore not necessarily follow as was suggested that any of the subsequent renewals would have thereby become also unenforceable.

In reference to the alleged overcharge of interest on the first loan, I do not think that this made the contract illegal. Apart from that, the present claim was not based on the documents made in reference to that loan. I am therefore inclined to agree with the trial judge's view that in the circumstances of the case that matter is irrelevant to the present claim. I would therefore dismiss the appeal with costs.

Suffian and **Ali F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Sault, Thara & Co.; Heng Cheng Swee & Co.*

NAVARADNAM v. SUPPIAH CHETTIAR

[F.C. (Ong C.J., Gill and Ong Hock Sim F.JJ.)

January 29, 1973]

[Ipoh — Federal Court Civil Appeal No. 57 of 1972]

Stamps — Promissory note stamped after execution — Whether duly stamped — Stamp Ordinance, 1949, ss. 41 and 47.

In this case the respondent had brought an action on three promissory notes. It appeared that these promissory notes had been stamped, after they were signed by the debtor. On objection being taken, the President of the Sessions Court held that the promissory notes were not admissible in evidence as they were not "duly stamped" and he dismissed the matter. The respondent thereupon appealed to the High Court and Sharma J. allowed the appeal holding that the promissory notes could be stamped "before or at the time of execution", so as to cover a reasonable period of time after execution ([1972] 2 M.L.J. 60). The appellant appealed to the Federal Court.

Held: *Per* Ong C.J. and Ong Hock Sim F.J. (Gill F.J. dissenting) the provisions of section 41 of the Stamp Ordinance, 1949 must be strictly construed and as the promissory notes in this case were only stamped after they were executed, they were not duly stamped and were inadmissible in evidence.

Cases referred to:

(1) *Re* v. *Debtor* [1958] 2 All E.R. 533, 536.

(2) *Surij Mull* v. *Hudson* (1901) I.L.R. 24 Mad. 259.

(3) *Rohini Chandrakant Vijayakar* v. *A.I. Fernandez* A.I.R. 1956 Bom. 421.

(4) *M. Takim & Co.* v. *Fazel Kassim Velji* [1955] A.C. 617 at p. 626.

(5) *Queen* v. *Arkwright* (1849) 18 L.J.Q.B. 26 at p. 28.

(6) *Chop Tiong Kok Hang* v. *Hock Cheong & Co.* [1934] M.L.J. 74 at p. 76.

(7) *Roderick* v. *Hovil* 170 E.R. (3 Camp.) 1320.
(8) *Croxford* v. *Universal Co.* [1936] 2 K.B. 253 at p. 281.
(9) *Jethi Bai* v. *Ramchandra Narottam* (1889) I.L.R. 13 Bom. 484.
(10) *Abel* v. *Lee* (1871) L.R. 6 C.P. 365 at p. 371.
(11) *Scott* v. *Scott* [1921] P. 107 at p. 124.
(12) *Cowper-Essex* v. *Acton L.B.* (1889) 14 App. Cas. 153 at p. 169.
(13) *R.* v. *Berchet* (1690) 1 Show 108.

FEDERAL COURT.

M. Sivalingam (*G. Sivapragasam* with him) for the appellants.

N. H. Chan for the respondents.

Ong C.J.: For more than two decades past it had been the established practice of moneylenders in Malaya to present their promissory notes to the collector for stamping, by means of an impressed stamp of the Stamp Office, *before* such notes were signed by the borrowers. I have not been aware, during all these years, of promissory notes being stamped, in any case, *after* execution. This practice has been in accordance with the accepted interpretation of the law as provided in section 41, read with section 47 of the Stamp Ordiance 1949. Section 41 reads as follows: —

"41. Save where express provision to the contrary is in this Ordinance contained, all instruments chargeable with duty and executed by any person in the Federation shall be stamped *before or at the time of execution.*"

Section 47 goes on to provide that "Save where other express provision is made in this or any other Ordinance, any unstamped or insufficiently stamped instrument, *not being a bill of exchange, cheque or promissory note* drawn or made within the Federation.... *may be stamped after the execution thereof* on payment of the unpaid duty, subject as follows", that, on presentation for stamping within 30 days of its execution, the duty only shall be payable, without any penalty, but in all other cases, upon payment of the duty plus a penalty as stipulated.

In the instant case it was disclosed in evidence before the Sessions Court that the Stamp Office at Ipoh had refused, since some time in 1969, to stamp any promissory note unless it bore the signature of the borrower. The respondent, a moneylender, had given three loans to the appellant between December 4, 1969 and August 24, 1970. On each occasion the printed form of promissory note was filled in by the appellant, a school-teacher, who signed and delivered it to the respondent together with the cash required for payment of the appropriate stamp fee. The promissory note was then taken on the same day to the Ipoh Stamp Office, where it was stamped in the prescribed manner. Upon the debtor's default in the payment of interest and principal on demand, he was sued in the Sessions Court. During cross-examination of the moneylender it was revealed that each of the promissory notes had been stamped *after* it was signed by the debtor. Thereupon counsel for the debtor took the objection, which was upheld by the court, that, under section 52 of the Stamp Ordinance, the promissory notes were inadmissible in evidence as not having been *"duly stamped"*. The claim being thereby dismissed with costs, the moneylender appealed to the High Court. His appeal was allowed and judgment entered in his favour as prayed. The debtor has appealed further to this court and in effect the sole question for determination now is whether the learned judge erred in interpreting the word "at", in the phrase "before or at the time of execution" in section 41, so as to cover a reasonable period of time after execution.

I must say that I feel considerable sympathy for the moneylender who found himself in this predicament through no fault of his own, but simply because he told the truth when he could have easily got over his difficulties by the denial of a fact which could not have been disproved. Doubtless Sharma J. felt the same way about dismissing a just claim purely on technical grounds. So he gave his reasons, supported by a number of authorities, for holding why the word "at" must include a reasonable period of time after execution. I was initially so swayed by the same arguments that I was minded to dismiss this appeal. But, having had the advantage of reading the judgment in draft of my brother H. S. Ong F.J., I have no doubt, on further consideration, that this appeal should be allowed. Where the law is clear, it must be upheld, however unfair or absurd it may appear to the judiciary, for hard cases make bad law. A liberal interpretation dictated by sympathy is only permissible where the words or phrase in question may fairly be considered ambiguous, whereas a rigid legalistic interpretation would not only be absurd but result also in injustice. In this connection it must be stated as a fact that the requirement of stamping before execution has raised no whisper of complaint on the ground of unreasonableness or hardship over all these many years. A period of three days' grace for stamping *after* execution was formerly allowed by section 40 of the Stamp Enactment of 1930 (Cap. 135). Its abolition by the Ordinance of 1949, if considered unreasonable, should have raised a furore by those prejudicially affected. Hence, in this case, the strict legal interpretation of sections 41 and 47 must apply.

The key to the decision of Sharma J. is to be found in the following passage of his judgment: —

"In the course of the arguments, I asked learned counsel for the respondent whether the requirements of law would be duly fulfilled if the act of stamping was done *immediately* after the execution of the promissory notes. The view of learned counsel for the respondent seems to be that the only way a promissory note can be lawfully executed in order to entitle it to be admitted in evidence is when it is stamped before execution and that even if it is stamped forthwith or immediately after execution it can neither be admitted in evidence nor acted upon by a court. I respectfully disagree with the view entertained by learned counsel as the effect of it would be to score out the words 'or at the time' expressly provided by the legislature in section 41. It is the duty of the court to give effect to every word used in an Act unless it makes the enactment absurd or senseless."

In the result the learned judge came to the conclusion that "there was sufficient compliance with section 41 of the Stamp Ordinance as the execution and the stamping cannot but be regarded as one transaction".

With all respect, I have found the greatest difficulty in accepting this interpretation of the law. Section 41, in my view, ought to be construed, first, by itself, next, in conjunction with section 47 and, finally, in the context of the whole Ordinance.

In the first place, it is clear that section 41 sets out the scope of the Ordinance in relation to "all instruments chargeable with duty and executed by any person in the Federation". These compendious terms necessarily include promissory notes. But the section applies to a large variety of *other* instruments as well. Consequently the phrase "before or at the time of execution" therein should be held to cover, as a matter of course, all sorts of instruments chargeable with duty. Section 7 of the Ordinance provides for stamping in two ways — either by affixing adhesive postage stamps or by means of an impressed stamp of the local Stamp Office. Under sub-section (3) of this section, certain instruments are required to be stamped with an impressed stamp — the word used is "shall" and a promissory note executed in Malaya falls under this category. Other instruments, however, which are included in the Second Schedule to section 7, do not. Therefore, every word in the phrase has its *raison d'etre* in that, while promissory notes are required to be stamped at the Stamp Office *"before"* execution, other instruments may properly be stamped with adhesive stamps which are cancelled *"at the time of execution"*. In this context then, can it be said that those words, as applied to promissory notes, are meaningless? If they are applicable — as I think they are — to instruments other than promissory notes, then they had been inserted because such other instruments may be stamped contemporaneously with execution thereof. Once it is conceded that this is the logical interpretation, then that is the end of the matter, since there is no need to say whether or not "at" should be taken, in so far as promissory notes are concerned, to mean and include a reasonable time after execution. They simply do not apply to promissory notes.

In the second place, it is all too clear that section 47 categorically excludes any promissory note from being stamped after execution, even if payment of a penalty is tendered. It would at all events be *ultra vires* the collector to stamp any promissory note after its execution. In the instant case I am of opinion that the purported stamping of the three promissory notes was null and void because these documents were not "duly stamped". To be admissible in evidence, section 52 requires that they should have been "duly stamped" which means, in the words of section 2, that "the instrument bears an ... impressed stamp ... affixed or used *in accordance with the law for the time being in force in the Federation*". Having been stamped in contravention of the provisions of section 52, such stamping was, of course, not in accordance with the law.

In conclusion I would add that the words "before", "at" and "after" refer plainly to different points of time in relation to any relevant act or event. They are far from synonymous. Section 47 has expressly excepted promissory notes from the general provisions of section 41 applicable to all dutiable instruments whatsoever. Promissory notes may not, under any circumstances, be stamped *after* execution. This is mandatory. Hence they must be stamped *before* execution, because stamping "at the time of execution" is a physical impossibility. To construe "at" as including "a reasonable time after" is therefore a violation of one of the cardinal rules of construction. As Lord Greene M. R. said in *Re a Debtor* (No. 335 of 1947): [1]

"If there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words used."

I would accordingly allow this appeal with costs here and in the court below and restore the judgment of the Sessions Court dismissing the respondent's claim in the action with costs.

Gill F.J.: This appeal arises from an action in the Sessions Court at Ipoh for the recovery of money lent by the respondent, a licensed money lender, to the appellant, a school teacher, on the security of three promissory notes which were filled in and signed by the appellant and delivered to the respondent who then took them to the Stamp Office at Ipoh where they were stamped in the manner prescribed by section 7(3) of the Stamp Ordinance, 1949.

At the trial of the action counsel for the borrower objected to the promissory notes being admitted in evidence on the ground that they had not been "duly stamped" as defined in section 2 of the Ordinance in that they were stamped in contravention of sections 41 and 47 of the Ordinance, and were therefore inadmissible by virtue of the provisions of section 52 of the Ordinance. The learned President upheld the objection and, the promissory notes being the whole basis of the money lender's claim, dismissed the action. On an appeal by the money lender to the High Court, Sharma J. set aside the decision of the learned President and entered judgment against the debtor for the amount claimed. Against the judgment the debtor has now appealed to this court.

It is to be observed that each of the promissory notes was stamped soon after it had been executed. The money lender's explanation for this was that the Stamp Office in Ipoh would not stamp any document until it was executed. The learned President's reaction to this was that the law could not be adapted to suit the administrative procedure adopted by the Stamp Office which, in his opinion, was wrong. He also expressed the opinion that the word "stamped" in sections 41 and 47 of the Ordinance should read "duly stamped".

In what I regard with respect as a carefully considered and well reasoned judgment, Sharma J. reached the conclusion that there was sufficient compliance with section 41 of the Ordinance as the execution and stamping of each of the promissory notes sued upon could not but be regarded as one transaction. In coming to that conclusion, he disagreed with the view expressed by the learned counsel for the appellant that the only way a promissory note can be lawfully executed in order to entitle it to be admitted in evidence is when it is stamped before execution, because in his opinion to uphold that view would be to score out the words "or at the time" expressly provided by the legislature in section 41.

Section 41 of the Ordinance reads:

"Save where express provision to the contrary is in this Ordinance contained, all instruments chargeable with duty and executed by any person in the Federation shall be stamped before or at the time of execution."

Thus the question for determination in this appeal is the proper construction of the phrase *"before or at the*

time of execution" in section 41 of the Stamp Ordinance, 1949 and the extent to which it is governed, if at all, by the provisions of section 47.

Section 47 of the Ordinance provides that "save where other express provision is made by this or any other Ordinance, any unstamped or insufficiently stamped instrument *not being a bill of exchange, cheque or promissory note* drawn or made within the Federation may be stamped after execution thereof on payment of the unpaid duty", and it goes on to provide for the stamping of other instruments within 30 days of their execution on payment of the stamp duty only without any penalty and in all other cases upon payment of the duty plus a penalty as stipulated.

It is to be noted that the only provision for stamping documents after they are executed is contained in section 47 and promissory notes are expressly excluded from that provision. But can it be said that the effect of section 47 is to score out the words "or at the time of" in setcion 41? I do not think so, for the simple reason that section 47 must be read subject to the express provision of section 41. In other words, each section must be read subject to the provision of the other section. Reading the two sections together, it would seem clear to me that as regards the stamping of promissory notes we must fall back on section 41 and, within the confines of that section itself, construe the phrase "before or at the time of execution" so as to give a meaning to each and every word thereof, if possible, without being compelled in the alternative to excise any word or words therefrom as otiose and meaningless. As the learned judge in the court below has said in his judgment, it is the duty of the court to give effect to every word used in an Act unless it makes the enactment absurd or senseless.

The main argument in support of this appeal is that by virtue of the provisions of section 47 of the Stamp Ordinance, 1949 a promissory note cannot be said to have been duly executed if it was stamped after it had been executed. For this argument counsel for the appellant has sought to rely on a number of English cases in order to show that a promissory note cannot be stamped after it has been executed for it to be regarded as having been duly stamped. Suffice it to say that the English Stamp Act, 1891 is not sufficiently in *pari materia* with the relevant provisions in our Stamp Ordinance, 1949 for useful reference or decision by analogy to English authorities.

What is almost in *pari materia* with the provisions of our Stamp Ordinance is section 17 of the Indian Stamp Act, 1899. As was held in the Madras case of *Surij Mull* v. *Hudson*,[2] it is sufficient if execution and stamping are part of the same transaction, so that it is permissible to stamp a promissory note immediately after execution. There is a decision to the contrary by the Bombay High Court in *Rohini Chandrakant Vijayakar* v. *A. I. Fernandes*,[3] but I am of the opinion that the view taken in the Madras case is correct, as the judgment of the Privy Council in *M. Takim & Co.* v. *Fazal Kassam Velji*,[4] considering an identical clause in the Zanzibar Stamp Decree, 1940, contains observations which support that view, even though the point was not finally decided as it did not directly arise in the decision of the appeal.

I do not think there is any difference between the words "at the time of execution" and the words "on or upon execution". The words "on or upon", it has been decided, may either mean before the act done to which it relates, or simultaneously with the act done, or after the act done, according as reason and good sense require that reference to the context and the subject matter of the enactment (per Lord Denman in *The Queen* v. *Arkwright*[5]). Then we have the observation of their Lordships of the Privy Council in the Zanzibar case that the word "at" in the phrase "at or before" in the proviso to section 19 cannot mean simultaneously with signing, and must therefore cover a reasonable time after signing. I do not not think this court should lightly brush aside that dictum.

There may be some force in the argument that the stamping must be done either just before or simultaneously with the execution of a promissory note if the statute were expressly to allow an adhesive stamp to be used, so that any sort of obliteration, such as the writing of the canceller's name or the date of the cancellation over the stamp, which can be done simultaneously with the execution, will be sufficient. But where, as under our law, the stamp is required to be cancelled at the office of the Collector of Stamp Duties, the document must be considered as having been duly stamped if it is presented at the Stamp Office for the purposes of stamping within a reasonable time after signing.

It has been further argued on behalf of the appellant that the provisions in the Indian Stamp Act and the Zanzibar Stamp Decree are different from the relevant provisions in our Stamp Ordinance in that both sections 41 and 47 of our Ordinance have opening words which qualify the respective provisions. Section 41 opens with the proviso "Save where express provision to the contrary is in this Ordinance contained", and section 47 begins with the proviso "Save where other express provision is made". It is submitted that the express provision in section 47 stating that all other instruments except promissory notes, etc. may be stamped after execution is "express provision to the contrary" of the general provision in section 41 that all instruments chargeable with duty shall be stamped "before or at the time of execution".

I can find no merit whatsoever in this submission. Construing sections 41 and 47 together, it would be absurd to hold that section 47 destroys the effect of section 41. Section 41 says that you can stamp a promissory note before or at the time of execution. The effect of section 47 is that you cannot stamp a promissory note except under the provisions of section 41. If section 41 is to be read subject to any contrary provision in section 47, the same rule applies to section 47 which must also be read subject to any contrary provision in section 41. After all the circumlocution we come back to the unequivocal provision of section 41 that a promissory note can be stamped "before or at the time of the execution". In other words, a promissory note can be stamped before or at the time of its execution but not afterwards.

In my view, the words "or at the time of execution", appearing in juxtaposition with "before", must clearly have been intended by the Legislature to have some significance additional to "before". "At" in common parlance has the meaning "on the occasion of", as, for instance, "at the wedding of X and Y". A wedding includes the celebrations and is not restricted to the single act of the parties signing the marriage register. Similarly the signing or execution of a promissory note is sufficiently contemporaneous with its stamping if the series of acts are regarded as a single transaction — thus giving a reasonable construction to the words "or at the time of execution". What is reasonable in the circumstances of any particular case is of course a question of fact. It would in my opinion be absurd to suggest that execution at the Stamp Office is the only possible and proper way to execute a promissory note other than by getting a blank note stamped before execution.

Pressing appellant counsel's argument to its logical limits, a promissory note, if signed at the premises next door to the Stamp Office, or in the next street or next town *before* presentation for stamping, it must necessarily be inadmissible in evidence. Where a moneylender carries on business in a town lacking any Stamp Office, is there no way of carrying on a legitimate business except by the borrower and the lender attending in person at the nearest Stamp Office to sign and stamp the note contemporaneously? I think there is. Even where a Stamp Office is situate in the same town, a traffic hold-up may delay presentation for stamping till the Office is closed for the day. In such a case, I would go so far as to say that stamping the document on the next day is not at all unreasonable. After all, the object of section 41, as a revenue measure, is but to prevent evasion of stamp duties. If 30 days were allowable, there may be any number of short-term loans of from one to four weeks which would escape the net. I think section 47 was enacted with that idea in mind.

Stamping, when done with reasonable urgency on the same date as its execution — or on the following day in exceptional circumstances — should in my opinion be regarded as sufficient compliance with the provisions of section 41. Otherwise the strict Draconian interpretation either makes the law look an ass, or in the alternative, it must compel a moneylender to tell a needless lie. I do not think that a moneylender telling the honest truth, as in this case, should suffer for his candour. I am therefore in complete agreement with the decision of the learned judge in his interpretation of the phrase "before or at the time of execution".

If the correct interpretation of section 41 is that it is sufficient if stamping and execution are part of the same transaction, the handing over of the promissory note by the borrower to the lender and the payment of the money by the lender to the borrower before the stamping does not contravene the provisions either of section 63(1) of the Stamp Ordinance, 1949 of section 84 of the Bills of Exchange Ordinance, 1949.

Finally, if I am to accept the submission on behalf of the appellant that a promissory note must be stamped before execution, I must hold that the words "or at the time of execution" in section 41 of the Stamp Ordinance, 1949 are mere surplusage and of no meaning. This, I think, I am not entitled to do.

In the result, I must hold that the promissory notes in the present case were duly stamped as they were stamped within a reasonable time after signing. I would therefore dismiss the appeal with costs.

Ong Hock Sim F.J.: This appeal is concerned solely with the determination of what is the proper time for stamping a promissory note. It is reduced, in simple terms, to the question whether the learned judge on appeal from a decision of the Sessions Court was correct in holding that it was sufficient compliance with section 41 of the Stamp Ordinance if a promissory note, admittedly stamped *after* execution, was executed and stamped so proximately in time that the execution and the stamping could not but be regarded as one transaction.

Here the respondent, a licensed moneylender had sued the appellant in the Sessions Court Ipoh for recovery of loans made under three promissory notes executed on December 4, 1969, August 4, 1970 and August 24, 1970. At the hearing, it was elicited that all three promissory notes had been stamped after execution, though on the same day. This, it was urged by counsel for the appellant, was in contravention of section 41 of the Stamp Ordinance (No. 59 of 1949) which reads:

"41. Save where express provision to the contrary is in this Ordinance contained, all instruments chargeable with duty and executed by any person in the Federation shall be stamped before or at the time of execution."

The only provision in the Ordinance for stamping of instruments *after execution* is section 47 but promissory notes are expressly excluded. It is therefore contended that the notes in question had not been duly stamped within the meaning of the Ordinance and section 52 would apply. Section 52 reads:

"52.(1) No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped."

"Duly stamped" is defined in section 2 and "means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the Federation". It has judicially been construed in *Chop Tiong Kok Hang* v. *Hock Cheng & Co.*[6]. Huggard C.J. said:

"According to this defintion, an instrument, in order to be duly stamped, must be stamped in accordance with the law for the time being in force in the Colony and I interpret this to mean that the instrument must bear a stamp of the proper value, it must be stamped in the proper manner with the proper description of stamp, and it must have been stamped at or within the time prescribed by law."

This case also held that it was not open to the collector to late-stamp in the absence of provision enabling that to be done. In *Roderick* v. *Hovil*[7] it was ruled that a subsequent stamping by the Commissioners of Stamps was of no avail as that could only apply to instruments as could be legally stamped after they were executed.

In the present case, respondent's counsel admitted that the notes were "stamped immediately after execution". The reason for this he says:

"The Stamp Office will not stamp any document until it is executed *i.e.* will not stamp on blank note. Will not stamp one if it is not signed. In some stamp office, they accept blank form for stamping but not in Ipoh."

With these admissions, the learned president in my view quite rightly dismissed the claim with costs for non-compliance with section 41. As he equally rightly observed "the law cannot be adapted to suit an administrative procedure" which he found to be wrong.

The words of section 41 are precise and unambiguous. As Scott L.J. said in *Croxford* v. *Universal Co.*[8]: "Where the words of an Act of Parliament are clear, there is no no room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute." Parsons J. in *Jethi Bai* v. *Ramchandra Narottam*[9] said:

"The present Act goes much further than this. It provides, by section 34, that an instrument shall not be admitted in evidence 'unless such instrument is duly stamped.' Such a provision clearly imposes upon the court the duty of seeing in every case whether an instrument presented to it is 'duly stamped' or not. 'Duly stamped' is defined in the Act to be 'stamped in accordance with the law in force, when such instrument was executed, or first executed.' When this instrument was executed, Act I of 1879 was in force. That Act, in section 16, lays down that 'all instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.' If an instrument is not so stamped, clearly it is not stamped according to the Act and cannot be held therefore to be 'duly stamped'."

Rohini v. *A. I. Fernandes*[3] was referred to by the learned judge on appeal from the decision of the president. Dealing with section 17 of the Indian Stamp Act, which is identical with our section 41, Chagla C.J. said:

"Turning again to section 17, it provides that the stamping of an instrument chargeable with duty and which has been executed in India must be *before or at the time of execution.* Therefore if a document is executed which is not stamped either before or at time of execution, it would not be duly stamped for the purpose of the Stamp Act and would be inadmissible in evidence by reason of section 35." (Our section 52).

He found clear evidence establishing that the stamping of the promissory note took place *after its execution* and went on to say: "In that case, the provisions of section 17 have not been complied with and the document has not been stamped either before or at time of execution."

The appeal from the decision of the Sessions Court rested on one ground only — that "the learned president erred in law in holding that the three (3) promissory notes were not admissible in evidence." The record is brief and I quote it in full:

"Mr. Chan for the appellant.
Mr. Theivanthiran for the respondent.
Mr. Chan

Section 41 Stamp Ordinance

Mr. Theivanthiran
1956 Bom. 421
Section 41 — express provision as regards promissory note. 'Duly stamped'

N.S.

I deliver an oral judgment.

N.S.

The appeal is allowed.

N.S."

These notes of argument would not appear to merit reversal of the judgment of the lower court but the grounds of judgment indicate the line which Sharma J. decided to take on his own initiative, namely, "whether the requirements of law would be duly fulfilled if the act of stamping was done *immediately after the execution* of the promissory notes". This was no doubt dictated, as the learned Chief Justice said in his judgment, out of sympathy for the predicament brought about by the refusal of an officer of the Stamp Office, Ipoh to follow the accepted practice. As Willes J. said (*Abel* v. *Lee*[10]): "No doubt the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnance or injustice..... But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act in order to bring it in accordance with his views of what is right or reasonable." The learned judge following *Surij Mull* v. *Hudson*[2] held that the execution and the subsequent stamping on the same day of the notes in question complied with section 41. Subrahmania Ayyar and Davies JJ. in that case said:

"We must also disagree with the judge's decision that the promissory note sued upon was inadmissible in evidence on the ground that the stamp was affixed and cancelled after the signature to the note was made. The uncontradicted evidence of the plaintiff shows that the acts were practically simultaneous, and the stamping therefore was done 'at the time of execution' within the meaning of section 16 of the Stamp Act, (I of 1879), which is the Act governing the present case. Even under the present Act, (II of 1899), where 'execution' is defined as meaning 'signature', we do not think it would make any difference if the stamp is affixed and cancelled immediately after the signature, the signing and the stamping being continuous acts in the same transaction."

With respect, this construction would import uncertainty as to the time of stamping promissory notes whereas specific times are appropriated to all other instruments. The fiction of sufficient proximity between the act of execution and that of stamping as continuous acts so as to be but one and the same transaction would involve the further exercise as undertaken by the judge in construing "immediately" and "forthwith" — which do not appear in section 41 — with, and the determination of, what will be considered a reasonable time for doing the subsequent act. As he said, "what is a reasonable time" is not always an easy thing to determine —

"What is a reasonable time must be decided not by any resort to a judicial discretion, but having regard to all the circumstances of the particular case, and it becomes a matter of law as to what circumstances would justify the judge in coming to the conclusion that the time is reasonable." (See *Scott* v. *Scott*[11]). As I have indicated, section 41 is clear and unambiguous and "the words of a statute never should in interpretation be added to or subtracted from, without almost a necessity" (*Cowper-Essex* v. *Acton L.B.*[12]). In *R.* v. *Berchet,*[13] it was said to be a known rule of interpretation of statutes that such a sense is to be made upon the whole as that no clause, sentence or word shall prove superfluous, void or insignificant, if by any other construction they may all be made useful and pertinent. Section 41 enacts that instruments shall be stamped before execution or at the time of execu-

tion, unless there is provision to the contrary, as in section 47, which however expressly excludes promissory notes. The modes of stamping are set out in subsections (3) and (4) of section 7. Instruments appearing in the 1st schedule and not included in the 2nd schedule shall be taken to the Stamp Office for cancellation and instruments included in the second schedule may be similarly cancelled at the Stamp Office or cancelled in the following manner:

"Whoever affixes any such stamp... shall, *at the time of execution*,... cancel the same in manner aforesaid so that it cannot be used again."

As promissory notes appear in the first schedule and are not included in the second schedule and are not of the class permitted by section 47 to be stamped after execution, it is clear that their validity would hinge upon their being stamped *before* execution. Instruments set out in the Second Schedule can clearly be stamped "at the time of execution" by cancellation of the postage stamp. Section 41 can be so construed that effect can be given to every word therein. *Surij Mull* was not followed and was expressly dissented from in the case of *Rohini*, to which reference had earlier been made, and I quote:

"Mr. Kapadia strongly relied on a judgment of the Madras High Court in — *'Surij Mull* v. *Hudson'*, 24 Mad. 259(A). In that case the executant was only one and the promissory note was signed by him and subsequently it was stamped, and the question was whether the provisions of section 17 had been compiled with, and the Madras High Court held that the uncontradicted evidence of the plaintiff shows that the acts were practically simultaneous and the stamping was therefore done at the time of execution within the meaning of section 16 which corresponded to section 17 of the present Act.

With very great respect to the Madras High Court, it is difficult to understand the significance of the expression 'practically simultaneous'. Either the stamping is after execution or it is before or at the time of execution. If the stamping is after execution, then clearly the case does not fall within section 17."

I would now refer to the two cases just mentioned. In *Surij Mull*, the facts were:

"...The evidence of the plaintiff's brother and agent was as follows:- 'I saw defendant execute this promissory note (dated 1st February 1897) interest at 2 per cent. per mensem. *After the promissory note was executed the stamp was affixed and cancelled by the defendant* before it was delivered.' ...From the findings of the Appellate Court, it appears... that the stamp had been affixed and cancelled after the execution of the note, though the signing and stamping had been practically simultaneous;... Moreover, the note was not stamped as required at the time of execution but afterwards."

In *Rohini's* case,

"the promissory note bears the signature of both the defendants, but it is admitted by the plaintiff that when defendants 1 and 2 signed the promissory note it did not bear the requisite stamps *and the requisite stamps were affixed subsequently and they were cancelled by* defendant 1."

The Indian Stamp Act permits use of adhesive stamps for promissory notes, so there can be no good reason for extending "at the time of execution" to include a reasonable time after execution. In our case, as the Chief Justice said, so far as promissory notes are concerned, there can be no doubt that its validity would depend upon its being duly stamped, that is, before execution.

The obiter dictum of Lord Somervell in *M. Takim & Co.* v. *Velji*,[4] though persuasive, cannot be binding on our courts. The identical phrase to our section 41 in the Zanzibar Stamp Decree was construed in a different context and did not concern promissory notes.

I would follow *Rohini's* case where Chagla C.J. has given his reason for dissenting from *Surij Mull's* case.

I would allow the appeal with costs here and on appeal to the High Court and restore the judgment of the president, Sessions Court, dismissing the claim with costs.

Appeal allowed.

Solicitors: *Thevin, Chandran & Siva; Chor Pee & Hin Hiong.*

MUNIANDY & ANOR. v. PUBLIC PROSECUTOR

[F.C. (Ong C. J., Gill and Ong Hock Sim F.JJ.)

February 12, 1973]

[Kuala Lumpur — Federal Court Criminal Appeal No. 2 of 1972]

Penal Code, s. 375 — Rape — Child-complainant — Need for corroboration — Circumstantial evidence — Defence case not properly and fairly presented to jury — Summing-up — Misdirection — Evidence Ordinance, 1950, s. 132 and 154 — Self-incriminating evidence — Need to warn witness.

This was an appeal against the conviction of the appellant on a charge of rape. The prosecution rested mainly and solely on the evidence of the child-complainant. There was no corroboration of her evidence. A witness was called for the defence and asked whether he had sexual intercourse with the complainant but the provisions of section 132(2) of the Evidence Ordinance was not explained to the witness.

Held: (1) the complainant's evidence by itself was far from convincing and there was a total absence of corroboration in any material particular implicating either of the appellants. On the contrary the complainant's evidence was discredited by her own father;

(2) the defence case was not properly and fairly presented to the jury;

(3) the failure of the learned judge to comply with the provisions of section 132 of the Evidence Ordinance resulted in serious misdirections;

(4) on all these grounds, the appeal must be allowed and the conviction of the appellants quashed.

Cases referred to:

(1) *R.* v. *Baskerville* [1916] 2 K.B. 658, 663.

(2) *R.* v. *Hester* [1972] 3 W.L.R. 910, 932.

FEDERAL COURT.

P. Devadas for the appellants.

Mohammad Adnan bin Datuk Shuib (Deputy Public Prosecutor) for the respondent.

Ong C.J.: The appellants were tried in the High Court at Malacca before a jury on a charge of rape allegedly committed on April 18, 1971 by the first appellant, with the abetment of the second appellant, on a girl about 12 years of age. The jury by a majority of 6 to 1 returned a verdict of guilty and the appellants were sentenced on November 13, 1972 to imprisonment for 5 years and 4 years respectively. They